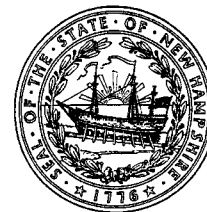




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 7, 2005

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Paul Croteau
d/b/a Rocket Snowmobile
240 Jericho Road
Berlin, NH 03570

Re: Administrative Order No. WMD 05-03

Dear Mr. Croteau:

Enclosed is Administrative Order No. WMD 05-03 issued this date to you as a result of inspections conducted on April 21, 2005, and May 9, 2005.

Should you have any questions regarding this order, please contact Michael Galuszka at 466-5389 or me at 271-3899.

Sincerely,

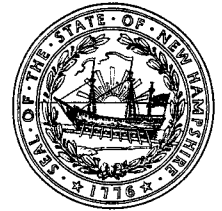
Paul L. Heitzler, P.E., Esq., Administrator
Waste Management Programs
Department of Environmental Services

Certified Mail/RRR: 7000 0600 0023 9932 1523

cc: DB/FILE/ORDER
Gretchen R. Hamel, Legal Unit Administrator
Anthony P. Giunta, P.G., Director WMD
Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
City Clerk, Berlin, NH
Ron Baillargeon, Zoning Officer, Berlin, NH



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Paul Croteau
d/b/a Rocket Snowmobile
240 Jericho Road
Berlin, NH 03570

**ADMINISTRATIVE ORDER
No. WMD 05-03**

July 7, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Paul Croteau d/b/a Rocket Snowmobile pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Paul Croteau is an individual apparently doing business as Rocket Snowmobile and having a mailing address of 240 Jericho Road, Berlin, NH 03570.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. Paul Croteau is the record owner of land at 240 Jericho Road, Berlin, NH, more particularly described in a deed recorded in the Coos County Registry of Deeds at Book 1017, Page 490, and identified on Berlin Tax Map 102 as Lot 1 ("the Property").
4. On April 13, 2005, DES received a complaint alleging that junk automobiles were leaking at the Property and that wastes generated at the Property were not being managed properly.

5. On April 21, 2005, DES personnel conducted a non-notifier inspection (“inspection”) of the Property. The purpose of the inspection was to determine Croteau’s compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.

6. During the inspection, DES personnel learned that Mr. Croteau has been operating a repair business servicing snowmobiles, cars, and motorcycles at the Property for approximately two years. Mr. Croteau also does some towing and has been crushing junk vehicles on the Property.

7. During the inspection made on April 21, 2005, DES personnel observed or learned the following:

- a. Used oil was draining from the car crusher onto the ground. Mr. Croteau has hired a company to crush vehicles at the Property;
- b. Several areas of petroleum stained soil;
- c. Several containers of used oil were scattered about the Property. All of the containers were unlabeled and one container was open and overflowing onto the ground;
- d. Scrap tires were stored in small piles without the required fire lanes and berms and some tires were scattered about the Property;
- e. Lead-acid batteries were scattered about the Property. The batteries appeared to be intact but were not stored on an impervious surface and/or protected from the weather;
- f. Mr. Croteau has obtained a parts washer. He did not have the product information available during the inspection and had not conducted a hazardous waste determination; and
- g. Two drums inside the garage. Mr. Croteau stated that they contained used oil. Neither drum was labeled.

8. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.

9. RSA 147-A: 2, VI defines “[hazardous waste] generator” as “any person who owns or operates a facility where hazardous waste is generated.”

10. During the inspection, DES personnel learned that Mr. Croteau generates approximately 55-gallons of used oil each year.

11. Paul Croteau is a generator of hazardous waste as defined by RSA 147-A:2, VI.

12. Env-Wm 502.01 requires that all generators of waste determine if their waste is a hazardous waste. Waste determined to be hazardous must be handled in accordance with the Hazardous Waste Rules.

13. As of the date of April 21, 2005, a hazardous waste determination had not been done on the parts washer fluid owned by Mr. Croteau and being used on the Property.

14. Env-Wm 807.06(b)(6) requires used oil generators to manage containers of used oil in such a manner as to prevent spillage, seepage, or other discharge of used oil into storm or sanitary sewers, onto the land, or into ground or surface waters.

15. Mr. Croteau did not prevent spillage of used oil on the Property.

16. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."

17. The petroleum contaminated soil noted during the inspection represents a discharge of hazardous waste that the generator is required to clean up.

18. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.

19. The containers of used oil noted during the DES inspection were not labeled.

20. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.

21. A container of used oil noted during the inspection was not closed and sealed. The containers of used oil observed were not being actively used during the inspection.

22. Env-Wm 807.06(b)(11) requires used oil generators to deliver used oil to an authorized facility.

23. During the DES inspection, Mr. Croteau informed DES personnel that that he delivers used oil generated on the Property to Guay Brothers Garage, Wight Street, Berlin, to burn in their waste oil burner.

24. On May 24, 2005, DES personnel met with Albert Guay, of Guay Brothers Garage. During the meeting Mr. Guay informed DES personnel that Guay Brothers Garage had accepted used oil from Paul Croteau in the past.

25. A review of DES files shows that Guay Brothers Garage has not notified DES that they are a used oil burner and is therefore not authorized to accept used oil.

26. Env-Wm 807.06(b)(12) requires that used oil be transported by a New Hampshire registered hazardous waste transporter using a three copy bill of lading.

27. Mr. Croteau informed DES personnel that he does not use a bill of lading for used oil transported from the Property.

28. Env-Wm 801.02(c) defines “used oil marketer” as “any person who engages in the act of marketing [used oil]”.

29. Env-Wm 807.08(a)(1)a. specifies that generators who market used oil directly to a burner shall be deemed to be a used oil marketer.

30. Paul Croteau is a used oil marketer.

31. Env-Wm 807.09(b)(1) requires used oil marketers to notify DES of its used oil marketing activities.

32. A review of DES files shows that Paul Croteau has not notified DES of his used oil marketing activities.

33. Env-Wm 809.02 states “persons who generate or collect spent lead-acid batteries destined for reclamation shall store the batteries in a manner designed to ensure that the battery housings do not break or leak acid onto the soil or into any groundwaters or surface waters.”

34. The lead-acid batteries observed by DES personnel at the Property were not stored in a such manner as to prevent leakage onto the soil or into groundwaters.

35. RSA 149-M:4, XXII defines “solid waste” in part, as “any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material.”

36. RSA 149-M:4, XXI defines “refuse” in part, as “any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

37. The scrap tires and scrap wire observed by DES personnel on the Property are solid wastes as defined by RSA 149-M:4, XXII.

38. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:

- a. In covered trailers;
- b. In transfer containers; or
- c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;
 - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
 - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolitic oils or other liquids generated by fire; and
 - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire

company capable of extinguishing the fire arrives.

39. The tires observed during the DES inspection of the Property were not stored in accordance with Env-Wm 2605.02(b).

40. As a result of the inspection, DES personnel issued a Report of Initial Complaint Investigation ("RICT") to Paul Croteau advising him to remove all petroleum contaminated soil and deliver it to a permitted waste disposal facility; seal all used oil containers; and label all used oil containers by May 9, 2005.

41. On May 9, 2005, DES personnel conducted a follow-up inspection of the Property. DES personnel learned from Mr. Croteau that none of the items outlined in the RICI had been corrected.

D. DETERMINATION OF VIOLATIONS

1. Paul Croteau has violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on the parts washer fluid.

2. Paul Croteau has violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste.

3. Paul Croteau has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle."

4. Paul Croteau has violated Env-Wm 807.06(b)(5) by failing to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.

5. Paul Croteau has violated Env-Wm 807.06(b)(6) by failing to prevent discharges of used oil to the soil.

6. Paul Croteau has violated Env-Wm 807.06(b)(11) by failing to deliver used oil to an authorized facility.

7. Paul Croteau has violated Env-Wm 807.06(b)(12) by failing to use a 3 part bill of lading when shipping used oil off-site.

8. Paul Croteau has violated Env-Wm 807.09(b)(1) by failing to notify DES that he is a marketer of used oil.

9. Paul Croteau has violated Env-Wm 809.02 by failing to store lead-acid batteries in such a manner as to prevent leakage and breakage.

10. Paul Croteau has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

E. ORDER

Based on the above findings, DES hereby orders Paul Croteau as follows:

1. **Immediately** ensure that used oil is managed in such a manner so as to prevent discharges to the soil.
2. **Immediately** ensure that used oil is delivered to an authorized facility or used oil burner.
3. **Immediately** ensure that used oil is transported to an authorized facility using a registered hazardous waste transporter. Used oil may also be self-transported in accordance with Env-Wm 807.07(a).
4. **Immediately** ensure that used oil is transported to an authorized facility using a bill of lading which contains all the information required by Env-Wm 807.06(b)(13) and that copies of bills of lading are kept on site for three years.
5. **Immediately** ensure that all lead-acid batteries are stored in a manner to prevent leakage and breakage.
6. **Within 15 days** the date of this Order, notify DES as a marketer of used oil by completing and submitting a New Hampshire hazardous waste notification form to DES. If Paul Croteau d/b/a Rocket Snowmobile intends to obtain a used oil burner for the Property, Paul Croteau shall notify DES as a used oil burner by completing and submitting a New Hampshire hazardous waste notification form to DES.
7. **Within 30 days** the date of this Order, perform a hazardous waste determination as specified in Env-Wm 502.01 on the parts washer fluid identified in Paragraph C.7. Submit the results along with any supporting data (i.e. material safety data sheets, chemical analyses, or process knowledge) used to make the hazardous waste determinations to DES. A complete hazardous waste determination will require you to determine if the waste is a federal hazardous waste. Waste determined to be hazardous must be handled in accordance with the Hazardous Waste Rules.
8. **Within 30 days** the date of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility.
9. Submit a written status report to DES **within 45 days** the date of this Order, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of all disposal receipts.**

10. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka
NHDES
80 Glen Road
Gorham, NH 03581
Telephone: (603) 466-5389
e-mail: mgaluszka@des.state.nh.us

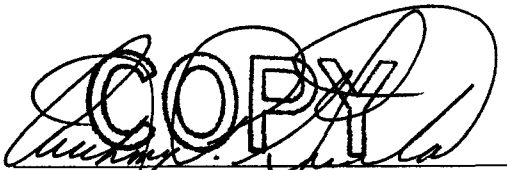
F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Croteau of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 147-A and RSA 149-M provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Paul Croteau remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M. DES will continue to monitor Croteau's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Coos County Registry of Deeds so as to run with the land.


Anthony P. Giunta, P.G., Director
Waste Management Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 0600 0023 9932 1424

cc: DB/FILE/ORDER
Gretchen R. Hamel, Legal Unit Administrator
Anthony P. Giunta, P.G., Director WMD
Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
City Clerk, Berlin, NH
Ron Baillargeon, Zoning Officer, Berlin, NH

ENVIRONMENTAL Fact Sheet



6 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.state.nh.us

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1998

Appealing a Decision of the NH Dept. of Environmental Services

The Councils of the Department of Environmental Services (DES) are legally authorized bodies composed of representatives of diverse interests, including business and industry, recreation, environmental groups, and state agencies. There is a Council attached to each division of DES: Water, Waste Management, and Air Resources. There is also a Council specifically for DES's wetlands protection program. Among other duties, each Council hears appeals of decisions made by programs within the division to which it is attached. Council members are compensated only for mileage. Their job in an appeal is to decide whether what has been done by the division is in accordance with applicable law, although very few members have any formal legal training.

If you have been adversely affected by a decision of DES and wish to appeal it, there are specific procedures prescribed by law which you must follow. You may choose to represent yourself or to have an attorney represent you. The complete rules of the Council to which you are appealing should be obtained and reviewed. Important information is highlighted below.

- For most decisions, you must file your appeal **within 30 calendar days** of the date that appears on the front of the document which contains the decision you are appealing. If the 30th day is a weekend or holiday, the appeal can be filed on the first business day after. If an appeal is not filed in time, it may not be heard.
- In order to file an appeal, you must have a direct interest in the order or decision that you wish to have changed. This is, you cannot appeal a decision simply because you don't like it. The decision must impact you **directly** and in some way **other** than it impacts the general public. This is called having **standing** to bring an appeal. If you do not have standing to bring an appeal, you may be allowed to **intervene** in an appeal brought by a person who does have standing, if you can show that you have a substantial interest in the appeal. A petition to intervene must be filed with the Council that is hearing the appeal and will not be granted automatically.
- An appeal petition (or notice) must contain your full name and current address. It must also include all the pertinent facts, what you would like the Council to do (for example, overturn an administrative order), and the reasons/arguments supporting your position. Please note that the Council's authority is limited to upholding or overturning, in whole or in part, the decision being appealed. Establishing conditions and terms of permits is solely within the authority of the programs within DES.
- All hearings are held at the offices of the appropriate division.

(over)

- You must submit the **original and a number of copies** (usually specified in the Council's procedural rules) of any document to be filed with the Council. Also, the presiding officer will require a specified number of copies of any documents, photographs or exhibits to be offered as evidence at the hearing, to ensure that all Council members and parties have a copy.
- You are **prohibited by law** from directly contacting any member of the Council deciding your appeal concerning that appeal, unless all other parties to the appeal have been **notified in advance** and been given an **opportunity to participate** in the discussion. Council members are obligated to report any contact they have with parties outside of the hearing that may come under this prohibition.

This fact sheet is intended as a basic source of information concerning appeals from DES decisions. It is not intended to replace the administrative rules of each Council, but merely to provide a summary of them.

For more information contact Gretchen C. Rule, Enforcement Coordinator; Department of Environmental Services, Office of the Commissioner; PO Box 95; Concord, NH 03302-0095; (603) 271-3503.

For copies of Council rules contact DES Public Information and Permitting; PO Box 95; Concord, NH 03302-0095; (603) 271-2975.